

1 STEVEN W. MHYRE
2 Acting United States Attorney
3 ELHAM ROOHANI
4 Nevada Bar #12080
5 LISA CARTIER-GIROUX
6 Nevada Bar #14040
7 MARK E. WOOLF
8 Assistant United States Attorneys
501 Las Vegas Boulevard South, Suite 1100
Las Vegas, Nevada 89101
Telephone: 702-388-6336
elham.roohani@usdoj.gov
lisa.cartier-giroux@usdoj.gov
mark.woolf@usdoj.gov
Attorneys for the United States.

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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 UNITED STATES OF AMERICA,) Case No. 2:16-cr-00100-GMN-CWH
13 Plaintiff,)
14 v.) **UNITED STATES' EMERGENCY
15 JAN ROUVEN FUECHTENER,) MOTION FOR RESTRAINING ORDER
16 Defendant.) UNDER ALL WRITS ACT
17) **(Expedited Review Requested)**
18)**

19 The United States of America hereby moves, pursuant to the All Writs Act, 28 U.S.C. §
20 1651, for an order restraining Defendant Jan Rouven Fuechtener (“Defendant”) and any of his
21 representatives, attorneys, agents, family members, and/or assigns from disbursing the proceeds
from the sale of any property, real or personal, in which Defendant has any interest.

22 The United States is in receipt of information that a significant piece of real property, in
23 which Defendant appears to have an interest, either has or is about to be sold. It is respectfully
24 requested that the Court order the proceeds from that sale be deposited with the Court until
25 sentencing to ensure that Defendant’s monetary penalties, including any restitution, fines, or
26 assessments, are paid. The United States further requests expedited review of this motion to
27 ensure that any proceeds from the sale are not dissipated, transferred, or otherwise placed
28 beyond the reach of the Court before a ruling can be entered.

1 Prior to filing this motion, the United States reached out to defense counsel and
 2 requested that Defendant voluntarily deposit \$100,000 with the Court for purposes of paying
 3 either all or a significant portion of the criminal monetary penalties, including restitution, that
 4 will be ordered at sentencing. Defense counsel indicated that she was not involved with the sale
 5 of the house and could not guarantee that she would have an opportunity to discuss the matter
 6 with her client in the timeframe requested, thus necessitating this motion.

7 **MEMORANDUM OF POINTS AND AUTHORITIES**

8 **1. Background**

9 On November 17, 2016, during the course of trial, Defendant pled guilty to one count of
 10 Possession of Child Pornography in violation of 18 U.S.C. § 2252(a)(5)(B), one count of
 11 Receipt of Child Pornography in violation of 18 U.S.C. § 2252A(a)(2) and (b), and one count of
 12 Distribution of Child Pornography in violation of 18 U.S.C. § 2252A(a)(2) and (b). ECF Nos.
 13 142 and 147. After his plea Defendant was remanded to custody and sentencing was set for
 14 March 16, 2017. ECF No. 142. Based on a stipulation between the parties, sentencing is
 15 currently scheduled for June 30, 2017. ECF No. 163.

16 By way of his plea agreement, Defendant acknowledged that “the conduct to which he is
 17 entering a plea gives rise to mandatory restitution to the victim(s) under 18 U.S.C. § 2259. ECF
 18 No. 146 at 11: 2-5. He further agreed “to pay restitution in the amount of \$5,000 per victim, for
 19 any victim who may be identified through the Child Victim Identification Program (CVIP)
 20 and/or Child Recognition Identification System (CRIS) and who requests restitution prior to
 21 sentencing.” *Id* at 11:11-15.¹ The plea agreement also provides:

22 Before or after sentencing, upon request by the Court, the United States, or the
 23 Probation Office, the defendant will provide accurate and complete financial
 24 information, submit sworn statements, and/or give depositions under oath
 25 concerning his assets and his ability to pay. The defendant . . . will release
 26 funds and property under his control in order to pay any fine, forfeiture, or
 27 restitution ordered by the Court.

28 See ECF No. 146 at 15:4-9.

¹ Defendant also acknowledged that, if his offense conduct occurred after May 15, 2015, he could be subject to an additional \$5,000 mandatory penalty assessment “pursuant to the Justice for Victims of Trafficking Act of 2015[.]” ECF No. 146 at 11:15-18.

1 Prior to the current charges, Defendant was a successful magician with a show on the
 2 famed Las Vegas Strip. It appears that, prior to indictment, Defendant and his spouse, Frank D.
 3 Alfter, purchased real property for approximately \$1.3 million. It further appears that, at some
 4 point post-indictment, a family friend of Defendant was given power of attorney to sell the
 5 property. Upon information and belief, the property was listed for sale at approximately \$1.9
 6 million. The United States has been informed that there is a pending sale of this property, and
 7 therefore, respectfully requests that the Court enter an order restraining the disbursement of
 8 proceeds from the sale to ensure the proceeds can be utilized to satisfy the monetary penalties,
 9 including restitution, fines, and assessments.

10 **2. Discussion**

11 The Government enforces orders of restitution through the Federal Debt Collection
 12 Procedures Act (“FDCPA”), 28 U.S.C. §§ 3001 *et seq.*, and “by all other available and
 13 reasonable means.” 18 U.S.C. 3664(m). The FDCPA authorizes the Court to utilize the All
 14 Writs Act, 28 U.S.C. § 1651, to support any of the remedies set forth in the FDCPA. 28 U.S.C.
 15 § 3202(a). “The All Writs Act enables federal courts to ‘issue all writs necessary or appropriate
 16 in aid of their respective jurisdictions and agreeable to the usages and principles of law.’ *United*
 17 *States v. Catoggio*, 698 F.3d 64, 67 (2d Cir. 2012) (citation omitted). “The broad power
 18 conferred by the All Writs Act is aimed at achieving “the rational ends of the law,” and courts
 19 have significant flexibility in exercising authority under the Act.” *Id*, citing *United States v. N.Y.*
 20 *Tel. Co.*, 434 U.S. 159, 172-73 (1969).

21 The All Writs Act has been successfully used to restrain or prevent a defendant from
 22 dissipating assets in various contexts, including to ensure availability of funds or assets to
 23 satisfy restitution prior to sentencing. *See e.g.*, *United States. Catoggio*, 698 F.3d 64 (2nd Cir.
 24 2012) (affirming district court decision to restrain assets in anticipation of resentencing using
 25 the All Writs Act) (collecting cases); *see also United States v. Yielding*, 657 F.3d 722 (8th Cir.
 26 2011) (declining to dissolve TRO issued to preserve assets for payment of restitution); *United*
 27 *States v. Swenson*, 2014 WL 2506300 (D. Idaho 2014) (holding that Mandatory Victims
 28 Restitution Act authorization for enforcement of a restitution by all “available and reasonable

1 means" includes writs under the All Writs Act issued in anticipation of an order of restitution
2 because the delay between conviction and sentencing "should not be an opportunity for a
3 defendant to frustrate the sentencing by disposing of assets."); *United States v. Numisgroup Intl.*
4 *Corp.*, 169 F.Supp.2d 133, 138 (E.D.N.Y. 2001) (upholding All Writs Act authority to authorize
5 restraint of assets where "sentencing and a substantial Order of Restitution is imminent"
6 because, post-conviction, defendants are "no longer bathed with the presumption of
7 innocence."); *United States v. Gates*, 777 F.Supp. 1294, 1296 n. 7 (E.D. Va. 1991) (noting that
8 trial court, even presentencing, has authority to order a defendant not to dispose of his assets to
9 ensure meaningful ability to impose a proper sentence and "to fulfill the intent and mandate of
10 Congress that a financially able defendant pay fines and costs[.]"); *United States v. Abdelhadi*,
11 327 F.Supp.2d 587 (E.D. Va. 2004) (authorizing All Writs Act restraining order against
12 defendant and others acting in concert with him from transferring, selling or disposing of
13 defendant's property and allowing government to file a notice of *lis pendens* where such order
14 was necessary to protect and effectuate sentencing and restitution orders and to ensure future
15 availability of property to satisfy restitution order).

16 Here, the Defendant has not yet been sentenced, and therefore, the FDCPA's post-
17 judgment enforcement remedies are not available. While various remedies will become
18 available to the Government under the Mandatory Victims Restitution Act and the FDCPA to
19 enforce collection of any monetary penalties (including restitution), none of them can be
20 instantly implemented and none of them prevents a defendant or those acting on his behalf from
21 dissipating assets or otherwise secreting, wasting, or placing them beyond the Government's
22 reach prior to sentencing. Importantly, Defendant here has already agreed to pay restitution in a
23 specified amount for specified victims. But, because there is no readily available remedy that
24 can ensure the effectiveness of the Court's upcoming restitution order, only the requested
25 restraining order can preserve the sale proceeds and ensure availability for satisfaction of
26 Defendant's substantial restitution order. This request is further supported by the plea
27 agreement, wherein Defendant expressly agreed to release funds and property under his control
28 to satisfy any criminal monetary penalties that might be ordered.

1 Accordingly, as set forth herein, the Court is well within its broad authority conferred by
2 the All Writs Act to enter an order requiring the sale proceeds from the sale of Defendant's real
3 property, or any other property, to be deposited with the Court prior to sentencing to ensure
4 satisfaction of criminal monetary penalties, including restitution.

5 Dated this 18th day of May 2017.

6 STEVEN W. MHYHRE
7 Acting United States Attorney

8 /s/ Mark E. Woolf
9 Mark E. Woolf
10 Assistant United States Attorney

11
12 **CERTIFICATE OF ELECTRONIC SERVICE**

13 I, Mark E. Woolf, certify that a copy of the **UNITED STATES' EMERGENCY**
14 **MOTION FOR RESTRAINING ORDER UNDER ALL WRITS ACT** was served
15 electronically through the Court's CM/ECF system on May 18, 2017.

16 /s/ Mark E. Woolf
17 MARK E. WOOLF
18 Assistant United States Attorney